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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No. 426 of 2006

The Oriental Insurance Company Limited, by Divisional Office, Momen Building, Jail Road, Tahsil and District Raipur (Chhattisgarh)

---- Appellant

Versus

1. Kishori Ranjan Sarkar, aged about 80 years, S/o Late Rasiklal Sarkar, Occupation Advocate, Resident of new Sarvodaya Nagar, Panchpedhi Naka, Opp. of Police Chowki, Raipur (Chhattisgarh).
2. Ram Chandra Pal, S/o Shri Keju Pal, Resident of Choubey Bandha, Rajim, Raipur (Chhattisgarh).
3. Ashish Kumar Sharma, S/o Fekuram Sharma, Resident of Govardhanpara, Rajim, District Raipur (Chhattisgarh).
4. Maksood Ali, S/o Noor Ali, Resident of Resident of Ravanbhatha, Gariaband, District Raipur (Chhattisgarh).
5. Smt. Langabai Kutare, W/o Late Shankar Kutare, Resident of Ambedkar Chowk, Gariaband, Raipur (Chhattisgarh).

---- Respondents

For Appellant/ Insurance Company	: Shri Sudhir Agrawal, Advocate.
For Respondent No.3	: Shri Tridib Bhattacharya, Advocate on behalf of Shri Prateek Sharma, Advocate
For Respondent No.5	: Shri Ajay Kumar Chandra, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

04/11/2016

1. This appeal by the Insurance Company is directed against the award dated 28.04.2006 passed by the 10^{th} Additional Motor Accident Claims Tribunal (FTC), Raipur (hereinafter called 'the Tribunal') in Claim Case No. 10 of 2005, whereby the Insurance Company has been held liable to pay compensation to the extent of Rs.1,44,150/-.

2. Briefly stated the facts of the case are that according to the Claimant on 06.03.2002, he was travelling in a Jeep bearing registration number MP-23T/0890. He was sitting in front of the Jeep. His case is that he was travelling from Rajim to Gariaband and when they reached at Peri Colony near Telephone Exchange, another Jeep bearing registration number MP-17A/4078 over-took the Jeep in which he was travelling with a view to get more passengers. During this process of overtaking, the said Jeep hit the Jeep in which the Claimant was travelling and it overturned. This is the statement of the Claimant, who is an Advocate by profession.

3. The Claimant, in his entire statement, has not blamed the driver of the Jeep No.MP-23T/0890 and he has completely fastened blame on the driver of Jeep No.MP-17A/4078. Admittedly, Jeep No.MP-17A/4078 was not insured. The Tribunal held that since Jeep No.MP-23T/ 0890 was insured with the Oriental Insurance Company Limited/Appellant, it is liable to pay the compensation. I fail to understand the logic. There is no allegation of negligence against the driver of Jeep No.MP-23T/0890 Before the Tribunal, there was no evidence that Jeep No.MP-17A/4078 was insured with the Oriental Insurance Company Limited. Therefore, in my view, it could not have been held liable to pay the compensation.

4. In this appeal, it has been argued by Learned Counsel appearing for Respondent No.5, the owner of Jeep No. MP-17A/4078 that in fact the said Jeep was got insured with the Oriental Insurance Company Limited after the accident. According to the owner, the accident took place at 1:00 pm and the Jeep was insured at 2:00 pm.

5. Learned Counsel for the Appellant/ Insurance Company has pointed out that he along with this appeal has placed on record a copy of the insurance policy obtained by the owner of the vehicle and it clearly shows that the policy has been made effective from 16:00 hours on 06.03.2002.

6. The argument of the Learned Counsel for Respondent No.5 is that once premium is received, the policy should be effective from midnight of the previous day. Learned Counsel may be right, if no specific time is mentioned in the policy. If a policy is issued just giving date, then as per the law laid down by the Apex Court, the policy would be effective from midnight of the previous day and would come into effect from 0:00 hours. However, in this case, while issuing the policy, the Insurance Company has clearly mentioned that the policy is effective from 16:00 hours on 06.03.2002. Admittedly, the accident took place at 1:00 pm and it is more than obvious that owner of the Jeep got his vehicle insured after the accident took place without informing the Insurance Company about this fact. This Court cannot pass an award exonerating the owner because that would amount to giving premium to dishonesty and fraud. The owner did not produce the policy before the Tribunal and it is apparent that he has obtained the policy after the accident had taken place. Therefore, the owner cannot escape from his liability to pay compensation.

7. In view of the above discussion, the appeal is allowed. The Insurance Company is exonerated of liability to pay compensation. It is stated that the entire compensation amount has been deposited. If any amount remains unpaid to the Claimant, that shall be refunded to the Insurance Company and the amount which has already been paid to the Claimant can be recovered by the Insurance Company from the owner/insured by filing certificate proceedings under Section 174 of the Motor Vehicles Act and it shall not be required to file a separate suit or any other proceedings for recovery of the amount.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

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